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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/590,284	06/09/2000	David M. Goldenberg	018733-0967	3453

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EXAMINER

ROARK, JESSICA H

ART UNIT

PAPER NUMBER

1644

DATE MAILED: 09/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action**Application No.**

09/590,284

Applicant(s)

GOLDENBERG ET AL.

Examiner

Jessica H. Roark

Art Unit

1644

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 7/15/03 and 8/4/03. FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY (check either a) or b))

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-5, 7, 12-15, 37 and 38.Claim(s) withdrawn from consideration: 6, 8-11 and 16-36.

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PHILLIP GAMBEL, PH.D
PRIMARY EXAMINER
7/15/03
9/15/03

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Continuation of 3. Applicant's reply has overcome the following rejection(s): The provision of a copy of the declaration filed under 37 CFR 1.132 assuring that all restrictions on the deposit of the LL2 antibody will be irrevocably removed has obviated the previous rejection of claim 5 under 35 USC 112, first paragraph.

Continuation of 5. does NOT place the application in condition for allowance because:

Claims 1-4, 7, 12-15 and 37-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Aruffo et al (US Pat. No. 6,051,228, of record), Meyer et al. (EP 0332865 A2, of record), Anderson et al. (US Pat. No. 5,776,456, of record), Tedder et al. (US Pat No. 5,484,892, of record) and The Merck Manual of Diagnosis and Therapy (Seventeenth Edition, Beers et al. eds., Merck Research Laboratories, Whitehouse Station, NJ, 1999, 'Chapter 180 "Demyelinating Diseases" pages 1474-1476, of record).

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Aruffo et al (US Pat. No. 6,051,228, of record), Meyer et al. (EP 0332865 A2, of record), Anderson et al. (US Pat. No. 5,776,456, of record), Tedder et al. (US Pat No. 5,484,892 of record) and The Merck Manual of Diagnosis and Therapy (Seventeenth Edition, Beers et al. eds., Merck Research Laboratories, Whitehouse Station, NJ, 1999; Chapter 180 "Demyelinating Diseases", pages 1474-1476, of record) as applied to claims 1-4, 7, 12-15 and 37-38 above, and further in view of Leung et al. (Mol. Immunol. 1995; 32(17/18):1413-1427, of record).

Applicant's arguments with respect to the rejections of record under 35 USC 103 (filed 7/7/03), have been fully considered in view of the proposed amendments filed 7/15/03 and 8/4/03, but have not been found convincing for the reasons of record in Paper No. 19 (4/4/03).

Applicant's proposed amendments filed 7/15/03 and 8/4/03 limit the claims to methods comprising administering antibodies of particular specificities and amend claims to correct claim dependencies. These amendments do not result in changes that affect the scope of the elected invention. The elected invention is set forth in claims 37 and 38.

Applicant again argues that in view of the mechanism of action of the antibody to CD40 taught by Aruffo et al. and the fact that CD40 is no ONLY expressed on B cells, the ordinary artisan would not have been motivated to combine the teachings of the references.

However, the rejections of record in Paper No. 19 clearly set forth the reasons why the ordinary artisan at the time the invention was made would have been motivated to combine the teachings of the references to produce the instantly recited method as defined by the election of record.

The proposed amendments do not alter the claims as read in view of the elected invention.

The Examiner therefore maintains that in view of these teachings, the ordinary at the time the invention was made would have had the requisite motivation to combine the teachings of the references to result in the instantly claimed invention, as defined by the previous election, and a reasonable expectation of success.

The rejection is therefore maintained for the reasons of record in Paper No. 19.